

**State of California  
Office of Administrative Law**

**In re:**

**Board of Equalization**

**Regulatory Action:**

**Title 18, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1703**

**Repeal sections:**

**NOTICE OF APPROVAL OF CHANGES  
WITHOUT REGULATORY EFFECT**


**California Code of Regulations, Title 1,  
Section 100**

**OAL File No. 2013-0730-01 N**

Existing section 1703 of title 18 of the California Code of Regulations, entitled "Interest and Penalties," lists the sections in the Sales and Use Tax Law (Revenue and Taxation Code, section 6001 et seq.) that apply to the calculation of, imposition of, or relief from interest and penalties, and incorporates, implements, and provides additional notice of important statutory provisions applicable to the calculation of, imposition of, and relief from interest and penalties. Effective January 1, 2011, section 6591.6 was added to the Revenue and Taxation Code (RTC) by Senate Bill No. 1028 (Stats. 2010, ch. 316). RTC section 6591.6 authorizes the Members of the Board, meeting as a public body, to find, under specified circumstances, that it is inequitable to compute interest on a monthly basis and to instead compute interest on a daily basis. The State Board of Equalization (BOE) proposed by this filing to amend section 1703 of title 18 of the California Code of Regulations to add RTC section 6591.6 to the list and to add substantive provisions originating from RTC section 6591.6. BOE also proposed by this filing to make minor corrections to section 1703. This filing was submitted as a change without regulatory effect pursuant to section 100, title 1, California Code of Regulations.

OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 8/28/2013

  
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Craig S. Tarpenning  
Assistant Chief Counsel

For: DEBRA M. CORNEZ  
Director

Original: Cynthia Bridges  
Copy: Richard Bennion

**OFFICE OF ADMINISTRATIVE LAW**

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**DEBRA M. CORNEZ**  
Director

**MEMORANDUM**

TO: Richard Bennion  
FROM: OAL Front Desk  
DATE: 8/29/2013  
RE: Return of Approved Rulemaking Materials  
OAL File No. 2013-0730-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2013-0730-01N regarding Interest and Penalties).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption applies concerning the effective date of the regulation approved in this file, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the state agency will contain the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's Web site once OAL posts the Internet Web site link to the full text of the regulation that is received from the state agency. (Gov. Code, secs. 11343 and 11344.)

**Please note this new requirement:** Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at **postedregslink@oal.ca.gov**.

**DO NOT DISCARD OR DESTROY THIS FILE**

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

## NOTICE PUBLICATION/REGULATORY SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2013-0730-01N</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization			

ENDORSED FILED  
IN THE OFFICE OF

2013 AUG 28 PM 3:22

2013 JUL 30 AM 10:35

OFFICE OF  
ADMINISTRATIVE LAW
  
 DEBRA BOWEN  
 SECRETARY OF STATE

AGENCY FILE NUMBER (If any)

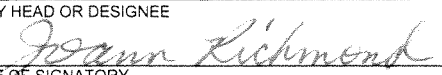
**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Interest and Penalties		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 1703	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE July 29, 2013
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 28 2013

Office of Administrative Law

## Text of Proposed Changes to

### Title 18. Public Revenue

#### 1703. Interest and Penalties.

(a) Statutory Provisions. Interest and penalties are prescribed in various sections of the Sales and Use Tax Law as follows:

<i><b>Subject</b></i>	<i><b>Sections</b></i>	
	<i><b>Interest</b></i>	<i><b>Penalties</b></i>
Failure to pay tax within required time (except determinations)	6480.4, 6480.8 6480.19, 6591	6476, 6477, 6478, 6479.3 6480.4, 6480.8, 6480.19, 6591, 7051.2
Failure to file a timely return		6591, 6479.3
Deficiency determinations	6482	6484 (negligence) 6485 (fraud), 7051.2
Determinations - Sales tax reimbursement or use tax collected but not timely remitted		6597
Determination - failure to make return	6513	6511, 7051.2 6514 (fraud)
Jeopardy determinations	6537	6537, 7051.2
Extensions of time	6459	
Determinations - Nonpayment of		6565, 7051.2
Offsets	6512	6512
Refunds and credits	6901, 6907 6908	6901
Suits for refund	6936	
Disposition of interest and penalties	7101	7101
Criminal Penalties		6073, 6094.5, 6422.1, 7152, 7153, 7153.5
Failure to make timely application for registration of motor vehicle, mobilehome, aircraft or undocumented vessel	6291-6294	6291-6294
Registration of vehicle, vessel or aircraft out of state		6485.1, 6514.1 (intent to evade)
Advertising that use tax will be absorbed		6207
Any violation of Sales and Use Tax Law		7153, 7153.5
Failure to collect use tax		6207
Failure to display use tax separately		6207
Failure to furnish return or other data		6452, 6455
Improper use of resale certificates	6072	6094.5, 6072

Making false return		7152
Misuse of vehicle use tax exemption certificates		6422.1
Operating as seller without permit		6071, 6077
Failure to obtain valid permit		6077, 7155
Relief from interest or penalty	6593, 6596	6592, 6596
Modified adjusted daily rate	6591.6	
Modified adjusted rate	6591.5	
Failure to obtain evidence that operator of catering truck holds valid permit		6074
Improper allocation of local tax by direct payment permit_holder		7051.2
Managed Audit Program	7076.5	
Failure to pay tax due to an error or delay by an employee of the Board or Department of Motor Vehicles	6593.5	
Erroneous refund	6964	
Tax Amnesty Program (Reporting Periods Beginning Before January 1, 2003)		7073, 7074

(b) Interest.

(1) Interest Rates.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) Overpayments. Except as provided below, “modified adjusted rate per annum” for overpayments of tax is the bond equivalent rate of 13-week treasury bills auctioned, rounded to the nearest full percent (or to the next highest full percent if .50%), subject to semiannual modification pursuant to the provisions of subparagraph (d) of §section 6591.5 of the Revenue and Taxation Code. For the period July 1, 1991, through June 30, 1992, the modified adjusted rate per annum for overpayments is equal to the bond equivalent rate of 13-week treasury bills auctioned on July 1, 1991, rounded to the nearest full percent (or to the next highest full percent if .50%).

(D) . . . (unchanged).

(E) . . . (unchanged):

1. . . . (unchanged).

2. . . . (unchanged).

(F) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

(5) Electronic Payments Made One Day Late.

(A) For the period of January 1, 2011, through January 1, 2016, if the Board finds, taking into account all facts and circumstances, that it is inequitable to compute interest at the modified adjusted rate per month or fraction thereof, as defined in subdivision (b)(1)(A) above, interest shall be computed at the modified adjusted daily rate from the date on which the tax or prepayment was due until the date of payment, if all of the following occur:

1. A payment or prepayment of tax was made one business day after the due date.

2. The person was granted relief from all penalties that applied to that payment of tax or prepayment.

3. The person filed a request for an oral hearing before the Board.

(B) For purposes of this paragraph:

1. "Modified adjusted daily rate" means the modified adjusted rate per annum, as defined in subdivision (b)(1)(B) above, determined on a daily basis by dividing the modified adjusted rate per annum by 365.

2. "Board" means the members of the State Board of Equalization meeting as a public body.

3. "Business day" means any day other than a Saturday, Sunday, or any day designated as a state holiday.

(C) This paragraph only applies to electronic payments or prepayments of taxes and does not apply to any payment made pursuant to a deficiency determination, a determination where no return has been filed, or a jeopardy determination.

(56) Refunds and Credits.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(~~67~~) Improper Use of Resale Certificate. . . . (unchanged).

(~~78~~) Untimeliness Caused by Disaster. . . . (unchanged).

(c) Penalties.

(1) Late Payments Generally.

(A) Prepayments.

1. Any person required to make a prepayment who fails to make a prepayment before the last day of the monthly period following the quarterly period in which the prepayment became due and who files a timely return and payment for that quarterly period shall pay a penalty of 6 percent of the amount equal to 90 percent or 95 percent of the tax liability, as prescribed in Section 6471 of the Revenue and Taxation Code, for each of the periods during that quarterly period for which a required prepayment was not made.

2. . . . (unchanged).

3. . . . (unchanged).

4. If any part of a deficiency in prepayment is due to negligence or intentional disregard of the Sales and Use Tax Law or authorized regulations, a penalty of 10 percent of the deficiency shall be paid.

The penalties provided in subparagraphs 2 and 4 of this subsection shall not apply to amounts subject to the provisions of sections 6484, 6485, 6511, 6514, and 6591 of the Revenue and Taxation Code (subparagraphs (c)(1)(B), (c)(2)(A) and (c)(2)(B) of this regulation).

5. . . . (unchanged).

6. . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(2) Late Return Forms Generally.

(A) . . . (unchanged).

(B) . . . (unchanged).



(3) Determinations.

(A) . . . (unchanged).

(B) . . . (unchanged).

(C) . . . (unchanged).

(D) . . . (unchanged):

1. . . . (unchanged).

2. the person's failure to make a timely remittance of sales tax reimbursement or use tax is due to a reasonable cause or circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

For purposes of this penalty, "reasonable cause or circumstances beyond the person's control" includes, but is not limited to, any of the following;

a. . . . (unchanged);

b. . . . (unchanged);

c. . . . (unchanged);

d. . . . (unchanged);

e. . . . (unchanged);

f. the person voluntarily corrected errors in remitting sales tax reimbursement or use tax collected that were made in previous reporting periods, and remitted payment of the liability owed as a result of those errors prior to being contacted by the Board regarding possible errors or discrepancies.

For purposes of this penalty, "sales tax reimbursement" is defined in section 1656.1 of the Civil Code, and also includes any sales tax that is advertised, held out, or stated to the public or any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer.

This penalty applies to determinations made by the Board pursuant to Article 2 (commencing with section 6481), Article 3 (commencing with section 6511), and Article 4 (commencing with section 6536) of Chapter 5, Part 1, Division 2 of the Revenue and Taxation Code.

(E) . . . (unchanged)..

(4) . . . (unchanged).

(5) . . . (unchanged).

(6) . . . (unchanged).

(7) . . . (unchanged).

(8) . . . (unchanged).

(9) . . . (unchanged).

(A) . . . (unchanged).

(B) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6071, 6072, 6073, 6074, 6077, 6094.5, 6207, 6291-6294, 6422.1, 6452, 6455, 6459, 6476-6478, 6479.3, 6480.4, 6480.8, 6480.19, 6482, 6484, 6485, 6485.1, 6511-6514, 6514.1, 6537, 6565, 6591, 6591.5, 6591.6, 6592, 6593, 6593.5, 6596, 6597, 6901, 6907, 6908, 6936, 6964, 7051.2, 7073, 7074, 7076.5, 7101, 7152-7153, 7153.5 and 7155, Revenue and Taxation Code.